

Calendar No. 618

108TH CONGRESS
2D SESSION**S. 2319****[Report No. 108–299]**

To authorize and facilitate hydroelectric power licensing of the Tapoco Project.

IN THE SENATE OF THE UNITED STATES

APRIL 19, 2004

Mr. ALEXANDER introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

JULY 7, 2004

Reported by Mr. DOMENICI, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To authorize and facilitate hydroelectric power licensing of the Tapoco Project.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tapoco Project Licens-
5 ing Act of 2004”.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to resolve jurisdictional
3 issues regarding hydroelectric power licensing of FERC
4 Project No. 2169 (the Tapoco Project or Project) by au-
5 thorizing—

6 (1) the Secretary of the Interior to complete, as
7 soon as practicable after the date of enactment of
8 this Act, an exchange of certain land; and

9 (2) after the exchange of land is completed, the
10 Federal Energy Regulatory Commission to license
11 the Project.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) ~~APGI.~~—The term “APGI” means Alcoa
15 Power Generating Inc. (including its successors and
16 assigns).

17 (2) ~~ATTORNEY GENERAL.~~—The term “Attorney
18 General” means the Attorney General of the United
19 States.

20 (3) ~~COMMISSION.~~—The term “Commission”
21 means the Federal Energy Regulatory Commission.

22 (4) ~~PARK.~~—The term “Park” means the Great
23 Smoky Mountains National Park.

24 (5) ~~PROJECT.~~—The term “Project” means
25 FERC Project No. 2169 (the Tapoco Project or

1 Project); including the Chilhowee Dam and reservoir
2 in the State.

3 (6) SECRETARY.—The term “Secretary” means
4 the Secretary of the Interior.

5 (7) SETTLEMENT AGREEMENT.—The term
6 “Settlement Agreement” means the agreement filed
7 with the Commission among the settling parties
8 reached in the licensing of the Project that describes
9 the operational and protection, mitigation, and en-
10 hancement measures for operation of the Project.

11 (8) STATE.—The term “State” means the State
12 of Tennessee.

13 **SEC. 4. LAND EXCHANGE.**

14 (a) IN GENERAL.—The Secretary shall offer to ac-
15 quire from APGI—

16 (1) subject to any encumbrances existing before
17 February 21, 2003, approximately 186 acres of land
18 (within the authorized boundary of the Park) located
19 northeast of United States Highway 129 and south-
20 west of the Tennessee Valley Authority power line;
21 in exchange for

22 (2) approximately 100 acres of land within the
23 Park that are—

24 (A) adjacent to or flooded by the
25 Chilhowee Reservoir;

1 ~~(B)~~ within the boundary of the Tapoco
2 Project as of February 21, 2003; and

3 ~~(C)~~ shown on the map entitled “Tapoco
4 Hydroelectric Project, P-2169, Settlement
5 Agreement, Appendix C-5, Proposed Land
6 Swap Areas, National Park Service and APGI”,
7 numbered TP514, Issue No. 8, and dated
8 March 11, 2004.

9 ~~(b)~~ CONSERVATION EASEMENT.—The Secretary shall
10 reserve a conservation easement over any land transferred
11 to APGI that shall—

12 ~~(1)~~ specifically prohibit any development of the
13 land by APGI, other than any development that is—

14 ~~(A)~~ necessary for the continued operation
15 and maintenance of the Chilhowee Reservoir; or

16 ~~(B)~~ required by the Commission;

17 ~~(2)~~ authorize public access to the easement area
18 subject to Park regulations and the terms and re-
19 strictions imposed by the Commission in any license
20 the Commission may issue for the project; and

21 ~~(3)~~ authorize the National Park Service to en-
22 force Park regulations on the land and in and on the
23 waters of Chilhowee Reservoir lying on the land, to
24 the extent not inconsistent with any license condi-
25 tions considered necessary by the Commission.

1 (c) REVERSION.—The deed from the Secretary to
 2 APGI shall contain a provision that requires the fee simple
 3 title for the Chillhowee Dam to revert to the United States
 4 if the Dam is breached or removed.

5 (d) UNSUITABLE LAND.—

6 (1) IN GENERAL.—If the Secretary determines
 7 that all or part of a tract of land acquired under
 8 subsection (a) is unsuitable for the Park, the Sec-
 9 retary shall provide APGI with an opportunity to
 10 make the tract suitable for inclusion in the Park.

11 (2) LAND NOT SUITABLE.—If APGI is unable
 12 to make the tract suitable for inclusion in the Park
 13 (as determined by the Secretary) or elects not to
 14 make the tract suitable for inclusion—

15 (A) the transfer of the land is voided, on
 16 written notice from the Secretary to APGI; and

17 (B) the Secretary shall negotiate an acqui-
 18 sition for inclusion in the Park of suitable land
 19 that is—

20 (i) of approximately equal value to the
 21 land acquired by APGI for inclusion in the
 22 Park; and

23 (ii) within or adjacent to the boundary
 24 of the Park.

25 (e) ACTION FOR FAIR MARKET VALUE OF LAND.—

1 ~~(1) IN GENERAL.—~~If the Secretary determines
 2 that negotiations for substitute land described in
 3 subsection ~~(d)(2)(B)~~ are at an impasse, the Sec-
 4 retary shall request the Attorney General to seek
 5 compensation for—

6 ~~(A)~~ the fair market value of the land or in-
 7 terests in land that would have been transferred
 8 to the Park had the land not been affected by
 9 the encumbrances or defects that made the land
 10 unsuitable for inclusion in the Park; and

11 ~~(B)~~ the costs and litigation expenses of the
 12 United States, including attorney fees.

13 ~~(2) FUNDS.—~~All funds recovered from any ac-
 14 tion under paragraph ~~(1)~~ shall—

15 ~~(A)~~ be immediately available, without fur-
 16 ther appropriation from the Treasury, for use
 17 by the Secretary for acquisition of land within
 18 or adjacent to the boundaries of the Park from
 19 willing sellers; and

20 ~~(B)~~ remain available until expended.

21 ~~(3) EFFECT ON CONVEYANCE.—~~Nothing in this
 22 subsection affects a conveyance by the United States
 23 to APCI under subsection ~~(a)~~.

24 ~~(f) BOUNDARY ADJUSTMENT.—~~

1 ~~(1) IN GENERAL.~~—On completion of an ex-
 2 change authorized under this section, the Secretary
 3 shall—

4 ~~(A)~~ adjust the boundary of the Park to re-
 5 flect the exchange; and

6 ~~(B)~~ administer any acquired land as part
 7 of the Park in accordance with applicable law
 8 (including regulations).

9 ~~(2) PUBLIC NOTICE.~~—The Secretary shall pub-
 10 lish in the Federal Register notice of any boundary
 11 revised under this subsection.

12 ~~(g) COMPLIANCE WITH OTHER LAWS.~~—An exchange
 13 of land under this section is deemed to meet the require-
 14 ments of—

15 ~~(1)~~ the National Environmental Policy Act of
 16 1969 (~~42 U.S.C. 4321~~ et seq.);

17 ~~(2)~~ the National Historic Preservation Act (~~16~~
 18 U.S.C. 470 et seq.); and

19 ~~(3)~~ the land exchange provisions of the Land
 20 and Water Conservation Fund Act of 1965 (~~16~~
 21 U.S.C. ~~460~~~~l~~–4 et seq.).

22 **SEC. 5. LICENSING.**

23 Notwithstanding any other provision of law, on com-
 24 pletion of the land exchange or acquisition of equivalent

1 land under section 4, the Commission shall have jurisdic-
 2 tion to license the Project :

3 **SEC. 6. LAND ACQUISITION.**

4 (a) SECRETARY OF THE INTERIOR.—

5 (1) IN GENERAL.—The Secretary may acquire,
 6 for the United States, title to land in the State that
 7 may be transferred by APGI to any nongovern-
 8 mental organization (as shown on the map entitled
 9 “Tapoco Hydroelectric Project, P-2169, Settlement
 10 Agreement, Appendix C-5, Proposed Land Convey-
 11 ances in Tennessee”, numbered TP616, Issue No.
 12 15, and dated March 11, 2004) pursuant to the Set-
 13 tlement Agreement.

14 (2) BOUNDARY ADJUSTMENT.—The Secretary
 15 shall—

16 (A) adjust the boundary of the Park to in-
 17 clude any land acquired under paragraph (1);
 18 and

19 (B) publish notice of the adjustment in the
 20 Federal Register.

21 (b) SECRETARY OF AGRICULTURE.—

22 (1) IN GENERAL.—The Secretary of Agriculture
 23 may acquire, for the United States, title to land in
 24 the State that may be transferred to any nongovern-

1 mental organization pursuant to the Settlement
2 Agreement described in subsection (a)(1).

3 ~~(2) BOUNDARY ADJUSTMENT.—The Secretary~~
4 of Agriculture shall—

5 (A) adjust the boundary of the Cherokee
6 National Forest to include any land acquired
7 under paragraph (1); and

8 (B) publish notice of the adjustment in the
9 Federal Register.

10 ~~(3) MANAGEMENT.—The Secretary of Agri-~~
11 culture shall evaluate whether it is feasible and prac-
12 ticable to manage any land acquired for the Cher-
13 okee National Forest under paragraph (1) in a man-
14 ner that retains the primitive, back-country char-
15 acter of the land.

16 **SEC. 7. AUTHORIZATION FOR APPROPRIATIONS.**

17 There are authorized to be appropriated such sums
18 as are necessary for the United States to acquire interests
19 in land and to otherwise effectuate the purposes and terms
20 of the land transfer provisions of the Settlement Agree-
21 ment.

22 **SECTION 1. SHORT TITLE.**

23 *This Act may be cited as the “Tapoco Project Licens-*
24 *ing Act of 2004”.*

1 **SEC. 2. DEFINITIONS.**

2 *In this Act:*

3 (1) *APGI.*—*The term “APGI” means Alcoa*
 4 *Power Generating Inc. (including its successors and*
 5 *assigns).*

6 (2) *COMMISSION.*—*The term “Commission”*
 7 *means the Federal Energy Regulatory Commission.*

8 (3) *MAP.*—*The term “map” means the map enti-*
 9 *tled “Tapoco Hydroelectric Project, P-2169, Settle-*
 10 *ment Agreement, Appendix B, Proposed Land Swap*
 11 *Areas, National Park Service and APGI”, numbered*
 12 *TP514, Issue No. 9, and dated June 8, 2004.*

13 (4) *PARK.*—*The term “Park” means Great*
 14 *Smoky Mountains National Park.*

15 (5) *PROJECT.*—*The term “Project” means the*
 16 *Tapoco Hydroelectric Project, FERC Project No.*
 17 *2169, including the Chilhowee Dam and Reservoir in*
 18 *the State of Tennessee.*

19 (6) *SECRETARY.*—*The term “Secretary” means*
 20 *the Secretary of the Interior.*

21 **SEC. 3. LAND EXCHANGE.**

22 (a) *AUTHORIZATION.*—

23 (1) *IN GENERAL.*—*Upon the conveyance by*
 24 *APGI of title acceptable to the Secretary of the land*
 25 *identified in paragraph (2), the Secretary shall si-*

1 *multaneously convey to APGI title to the land identi-*
 2 *fied in paragraph (3).*

3 (2) *DESCRIPTION OF LAND TO BE CONVEYED BY*
 4 *APGI.—The land to be conveyed by APGI to the Sec-*
 5 *retary is the approximately 186 acres of land, subject*
 6 *to any encumbrances existing before February 21,*
 7 *2003—*

8 (A) *within the authorized boundary of the*
 9 *Park, located northeast of United States High-*
 10 *way 129 and adjacent to the APGI power line;*
 11 *and*

12 (B) *as generally depicted on the map as*
 13 *“Proposed Property Transfer from APGI to Na-*
 14 *tional Park Service”.*

15 (3) *DESCRIPTION OF LAND TO BE CONVEYED BY*
 16 *THE SECRETARY.—The land to be conveyed by the*
 17 *Secretary to APGI are the approximately 110 acres*
 18 *of land within the Park that are—*

19 (A) *adjacent to or flooded by the Chilhowee*
 20 *Reservoir;*

21 (B) *within the boundary of the Project as of*
 22 *February 21, 2003; and*

23 (C) *as generally depicted on the map as*
 24 *“Proposed Property Transfer from National*
 25 *Park Service to APGI”.*

1 (b) *MINOR ADJUSTMENTS TO CONVEYED LAND.*—The
 2 Secretary and APGI may mutually agree to make minor
 3 boundary or acreage adjustments to the land identified in
 4 paragraphs (2) and (3) of subsection (a).

5 (c) *OPPORTUNITY TO MITIGATE.*—If the Secretary de-
 6 termines that all or part of the land to be conveyed to the
 7 Park under subsection (a) is unsuitable for inclusion in the
 8 Park, APGI shall have the opportunity to make the land
 9 suitable for inclusion in the Park.

10 (d) *CONSERVATION EASEMENT.*—The Secretary shall
 11 reserve a conservation easement over any land transferred
 12 to APGI under subsection (a)(3) that, subject to any terms
 13 and conditions imposed by the Commission in any license
 14 that the Commission may issue for the Project, shall—

15 (1) specifically prohibit any development of the
 16 land by APGI, other than any development that is
 17 necessary for the continued operation and mainte-
 18 nance of the Chilhowee Reservoir;

19 (2) authorize public access to the easement area,
 20 subject to National Park Service regulations; and

21 (3) authorize the National Park Service to en-
 22 force Park regulations on the land and in and on the
 23 waters of Chilhowee Reservoir lying on the land, to
 24 the extent not inconsistent with any license condition
 25 considered necessary by the Commission.

1 (e) *APPLICABILITY OF CERTAIN LAWS.*—Section 5(b)
 2 of Public Law 90–401 (16 U.S.C. 460l–22(b)), shall not
 3 apply to the land exchange authorized under this section.

4 (f) *REVERSION.*—

5 (1) *IN GENERAL.*—The deed from the Secretary
 6 to APGI shall contain a provision that requires the
 7 land described in subsection (a)(3) to revert to the
 8 United States if—

9 (A) the Chilhowee Reservoir ceases to exist;

10 or

11 (B) the Commission issues a final order de-
 12 commissioning the Project from which no further
 13 appeal may be taken.

14 (2) *APPLICABLE LAW.*—A reversion under this
 15 subsection shall not eliminate APGI's responsibility
 16 to comply with all applicable provisions of the Fed-
 17 eral Power Act (16 U.S.C. 791a et seq.), including
 18 regulations.

19 (g) *BOUNDARY ADJUSTMENT.*—

20 (1) *IN GENERAL.*—On completion of the land ex-
 21 change authorized under this section, the Secretary
 22 shall—

23 (A) adjust the boundary of the Park to in-
 24 clude the land described in subsection (a)(2); and

1 (B) administer any acquired land as part
 2 of the Park in accordance with applicable law
 3 (including regulations).

4 (2) NATIONAL PARK SERVICE LAND.—Notwith-
 5 standing the exchange of land under this section, the
 6 land described in subsection (a)(3) shall remain in
 7 the boundary of the Park.

8 (3) PUBLIC NOTICE.—The Secretary shall pub-
 9 lish in the Federal Register notice of any boundary
 10 revised under paragraph (1).

11 **SEC. 4. PROJECT LICENSING.**

12 Notwithstanding the continued inclusion of the land
 13 described in section 3(a)(3) in the boundary of the Park
 14 (including any modification made pursuant to section 3(b))
 15 on completion of the land exchange, the Commission shall
 16 have jurisdiction to license the Project.

17 **SEC. 5. LAND ACQUISITION.**

18 (a) IN GENERAL.—The Secretary or the Secretary of
 19 Agriculture may acquire, by purchase, donation, or ex-
 20 change, any land or interest in land that—

21 (1) may be transferred by APGI to any non-
 22 governmental organization; and

23 (2) is identified as “Permanent Easement” or
 24 “Term Easement” on the map entitled “Tapoco Hy-
 25 droelectric Project, P-2169, Settlement Agreement,

1 *Appendix B, Proposed Land Conveyances in Ten-*
 2 *nessee”, numbered TP616, Issue No. 15, and dated*
 3 *March 11, 2004.*

4 *(b) LAND ACQUIRED BY THE SECRETARY OF THE IN-*
 5 *TERIOR.—The Secretary shall—*

6 *(1) adjust the boundary of the Park to include*
 7 *any land or interest in land acquired by the Sec-*
 8 *retary under subsection (a);*

9 *(2) administer any acquired land or interest in*
 10 *land as part of the Park in accordance with applica-*
 11 *ble law (including regulations); and*

12 *(3) publish notice of the adjustment in the Fed-*
 13 *eral Register.*

14 *(c) LAND ACQUIRED BY THE SECRETARY OF AGRI-*
 15 *CULTURE.—*

16 *(1) BOUNDARY ADJUSTMENT.—The Secretary of*
 17 *Agriculture shall—*

18 *(A) adjust the boundary of the Cherokee Na-*
 19 *tional Forest to include any land acquired under*
 20 *subsection (a);*

21 *(B) administer any acquired land or inter-*
 22 *est in land as part of the Cherokee National For-*
 23 *est in accordance with applicable law (including*
 24 *regulations); and*

1 (C) publish notice of the adjustment in the
2 *Federal Register*.

3 (2) *MANAGEMENT*.—*The Secretary of Agriculture*
4 *shall evaluate the feasibility of managing any land*
5 *acquired by the Secretary of Agriculture under sub-*
6 *section (a) in a manner that retains the primitive,*
7 *back-country character of the land.*

8 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

9 *There are authorized to be appropriated such sums as*
10 *are necessary to carry out this Act.*

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[Report No. 108-299]

A BILL

To authorize and facilitate hydroelectric power
licensing of the Tapoco Project.

JULY 7, 2004

Reported with an amendment